

BATTLE CREEK CITY PLANNING COMMISSION MEETING MINUTES

Wednesday, May 26, 2010

1. Call to Order:

Chairman Preston Hicks, called the meeting to order at 4:00 p.m.

2. Attendance:

Members Present:

Steve Barker	Preston Hicks	Ed Scheinfeldt
Susan Baldwin (Mayor)	William Morris	Chip Spranger
Jan Frantz	John Godfrey	John Stetler

Staff Present: Christine Hilton, AICP, Planning Supervisor
Susan Bedsole, Director Community Svcs.
Jill Steele, Deputy City Attorney
Glenn Perian, Senior Planner
Leona Parrish, Administrative Assistant

3. Additions or Deletions to the Agenda: None

4. Approval of Minutes: Meeting Minutes of March 24, 2010.

A MOTION WAS MADE BY COMMISSIONER GODFREY, SUPPORTED BY COMMISSIONER BARKER TO APPROVE THE PLANNING COMMISSION MEETING MINUTES FOR MARCH 24, 2010 AS PRESENTED. VOTE ON MOTION: ALL IN FAVOR; NONE OPPOSED; MOTION CARRIED.

5. Correspondence: None

6. Public Hearing & Deliberation:

- A. Special Use Permit (#S-04-10): Petition from Mr. Dan Rippinger, Summit Pointe, 140 W. Michigan Ave., Battle Creek, MI 49017, on behalf of property owner, requesting a Special Use Permit to allow an Adult Foster Care Facility with a (CRS) Crisis Residential Services Certificate in an "O-1 Office District" as permitted under the Planning and Zoning Code, Chapter 1290, Sec. 1290.01(b)(7), for property located at 168 N. 20th Street.**

Chairman Hicks declared the public hearing for #S-04-10 open. Ms. Christine Hilton, Planning Supervisor, read the staff report stating Summit Pointe is seeking the special use permit to allow for a total of six residential clients and they have stated that they will have a minimum of two employees on site at all times. Both the Adult Foster Care license and the Crisis Residential Certification have specific regulations that the provider must adhere to, and are regulated, monitored, and enforced by the State of Michigan.

Foster care facilities are regulated by the Michigan Department of Human Services and defined as "the provision of supervision, personal care, and protection in addition to room and board for 24 hours a day, 5 or more days a week, and for 2 or more consecutive weeks for compensation." Adult foster care facility is further defined as "a governmental or nongovernmental establishment that provides foster

care to adults. It includes facilities and foster care family homes for adults (18 or over) that are aged, mentally ill, emotionally disturbed, developmentally disabled, or physically handicapped who require supervision on an ongoing basis but who do not require continuous nursing care.”

The Michigan Zoning Enabling Act of 2006 specifically states that state licensed residential facilities shall be considered a residential use of property for the purposes of zoning and permitted use in all residential zones. The statute further states that they shall not be subject to a special use or conditional use permit or any other procedure different from those required for other dwellings of similar density in the same zoning district. However, two factors were considered by staff for this specific property, and therefore, based on these findings, the request from Summit Pointe falls under Chapter 1290 Special Land Uses:

- First, while the MZEA states that state licensed residential facilities (i.e. adult foster care) are considered residential and therefore permitted in all residential districts, the subject property is zoned O-1 Office which does not permit any residential uses by right. Therefore, the provisions of the MZEA are not applicable to this request.
- Secondly, the statute that regulates foster care facilities specifically state that the responsibilities of the caregiver are to provide room and board, supervision, protection, and personal care to a resident. The introduction of mental health services to the residents as allowed by the Crisis Residential Certification qualifies this project in a different manner than a typical adult foster care facility.

Mr. Dan Ripinger, representing Summit Pointe, was present and provided information regarding CRS facilities and noted that Calhoun County needs a place to house persons, as the Kalamazoo home is at capacity and now closed for residents of Calhoun County.

Mr. Gerald Evans, 142 N. 19th Street, came forward to speak in opposition. Stated he was unsure of this type of care facility and asked if it had a maximum of 6 persons. He asked if they were persons with problems and would be wandering the block and was concerned as they have many children in the neighborhood and couples from Territorial Rd. that walk.

Mr. Dan Ripinger stated that Summit Pointe deals with mental and physical disabilities and that there would be maximum of 6 persons with staff on hand 24 hours a day, seven days a week with a physician and nursing staff on call. Noted they have a strict schedule and residents would not have the ability to roam.

No one else spoke either for or against this petition and the public hearing was closed.

A MOTION WAS MADE BY COMMISSIONER SCHEINFELDT, SUPPORTED BY COMMISSIONER SPRANGER TO APPROVE THE SPECIAL USE PERMIT TO ALLOW AN ADULT FOSTER CARE FACILITY WITH CRISIS RESIDENTIAL SERVICES (CRS) CERTIFICATE FOR PROPERTY LOCATED AT 168 N. 20TH STREET, (PARCEL # 0135-00-095-0), AS THE REQUEST MEETS THE BASIS FOR DETERMINATION AS OUTLINED IN THE STAFF REPORT, TO INCLUDE FOLLOWING CONDITIONS:

1. **All necessary approvals and any required permits shall be obtained from the appropriate agencies, including but not limited to the Department of Public Works, Inspections Department, and the State of Michigan, prior to Certificate of Occupancy.**
2. **The refuse dumpster that is shown on the site plan must be fully enclosed by an opaque enclosure that exceeds the height of the dumpster in order to provide adequate screening from adjacent properties.**
3. **The approval of the special use permit is only valid for such time that the facility maintains the Crisis Residential Service Certification.**

Discussion:

Commissioner Godfrey asked if the persons are dangerous. Mr. Rippinger stated no, if they were dangerous they would be put into a hospital; said at this location it would help those individuals before they become dangerous.

Commissioner Morris asked if they would be creating new jobs. Mr. Rippinger stated yes, a few.

Commissioner Morris stated he would support this Special Use Permit if all the conditions were met.

Commissioner Scheinfeldt stated the staff report was well done and asked if when the doors are open would there be six persons placed there immediately. Mr. Rippinger stated there would be an average of four persons, and would seldom have six.

Mayor Baldwin stated it is difficult with having a residential neighborhood so near, and not sure it fits within that neighborhood and any future commercial growth.

Commissioner Frantz stated she had some questions regarding the number of persons there and the Kalamazoo location; asked with the Kalamazoo location being closed to Calhoun County residents, would there be an increase in persons for this Battle Creek location. Further, if they are not allowed to roam, what would they be allowed to do to occupy themselves.

Mr. Rippinger stated this location would be only for Calhoun County persons and they would subject to a strict schedule including therapy session and games, etc.

Commissioner Godfrey asked if this would be a live-in facility. Mr. Rippinger stated, yes that staff would be there always as a caretaker.

Commissioner Stetler stated he felt this would be a good location and he would be in support.

Commissioner Morris asked if it would be limited to six persons. Mr. Rippinger stated yes.

Commissioner Godfrey asked if Branch and Berry County have a similar facility, and if not, would they be taking any persons from outside our county. Mr. Rippinger stated they do not plan to do so, but could not guarantee.

Commissioner Frantz asked for the basis of determination regarding public utilities; would they anticipate additional use of police and/or ambulance facilities used in this neighborhood if approved. Mr. Rippinger stated there could be more police calls as they are mental patients.

Commissioner Scheinfeldt stated there are troubled individuals that would be having problems no matter where they may be; but if they were in a facility it would decrease incidents happening and he would be in approval of this special use permit.

Mayor Baldwin stated she still is not in agreement that it would be good for this area.

Commissioner Godfrey asked if there was opportunity for persons to be outside without staff and wandering off into the neighborhood. Mr. Rippinger stated he could not see it happening as they would be enforced by two staff persons.

Commissioner Barker asked what would be the average length of stay for an individual. Mr. Rippinger stated 7 to 18 days. Commissioner Barker stated he would agree with this special use permit.

Commissioner Morris stated it is good to have in Battle Creek instead of Kalamazoo.

Commissioner Godfrey asked if Summit Pointe would maintain this property. Mr. Rippinger stated, yes and it would also be regulated by the State of Michigan.

A ROLL CALL VOTE WAS TAKEN: EIGHT IN FAVOR (BARKER, FRANTZ, GODFREY, HICKS, MORRIS, SCHEINFELDT, SPRANGER AND STETLER); ONE OPPOSED (BALDWIN); MOTION APPROVED.

B. Ordinance Amendment (A-01-10): A request from the Downtown Partnership to amend the C-7 Street Level Retail zoning district. This amendment would remove sub-districts A and B from the C-7 zoning district, and all current permitted uses would be allowed without restriction as to the location in a building.

Chairman Hicks declared the public hearing for #A-01-10 open. Ms. Christine Hilton, Planning Supervisor, read the staff report regarding the ordinance amendment stating the challenges with the existing ordinance, the Downtown Partnership Board formed a committee to meet with city staff to review the ordinance and discuss possible amendments. The committee met on March 31, 2010 and found that the existing list of permitted uses for both the C7-A and C7-B districts were appropriate for the entire district without limitation as to the location in a building. Based on this input, the planning staff presented the proposed revision to the full Downtown Partnership Board at their April 27, 2010 meeting; the board unanimously recommended that the revised ordinance be submitted to the City Commission for approval.

Ms. Hilton noted the proposed ordinance amendment as recommended, they are as follows:

- All references to the sub-districts A and B have been removed and the list of permitted uses has been combined.
- The definition of “financial institutions” has been expanded in Ch. 1271.03(i) to specify that cash advance establishments are not considered financial institutions, and therefore not allowed in this zoning district.

- The revision removed “churches and missions” from Ch. 1271.11 Prohibited Uses, in accordance with the Religious Land use and Institutional Persons Act of 2000. Religious assembly uses are permitted in the City of Battle Creek by Special Use Permit.

Ms. Hilton stated that in trying to address the ongoing challenges in the downtown that are further exacerbated by the use/location limitations in the current ordinance, staff recommends that the Planning Commission make a favorable recommendation of the adoption of the ordinance amendment to the City Commission.

Mr. Bill Schroer, 2 W. Michigan Avenue, Chairperson of Downtown Partnership Board came forward to speak; stated the downtown changing and restrictions make it difficult to fill the vacant buildings. Said with the Downtown Transformation, the businesses need to have flexibility for a “new” downtown and need to be less restrictive. Noted there are few buildings that can be broken out 25 ft. from the front, and property owners have lost contracts because of this ordinance requirement.

No one else spoke either for or against this petition and the public hearing was closed.

A MOTION WAS MADE BY COMMISSIONER GODFREY, SUPPORTED BY COMMISSIONER SCHEINFELDT TO APPROVE THE AMENDMENT TO CHAPTER 1271 “C-7 STREET-LEVEL RETAIL DISTRICT” TO INCLUDE STAFF REQUIREMENTS AS PRESENTED.

Discussion:

Commissioner Stetler stated that in the past there have been problems for businesses and the amendment could contribute to more businesses being brought to the downtown district.

Commissioner Frantz stated Battle Creek Unlimited is in favor of this amendment to help businesses and asked Christine Hilton if churches were prohibited. Ms. Hilton stated the existing ordinance outright prohibits churches; however the Religious Land Uses and Institutional Persons Act provides protection to churches and in accordance with this the prohibition is being removed from the ordinance, but under Ch. 1291 they are allowed everywhere in the City as a special use.

Mayor Baldwin asked regarding cash advance business being allowed. Ms. Hilton stated it is referenced on page 3; Ch. 1271.03(i) defines “financial institutions” which are permitted in this district; this definition was amended to exclude cash advance establishments.

Commissioner Frantz asked if additional changes could be made to the ordinance at this point. Ms. Hilton stated changes could be made only if they were in accordance with the wording listed in the public hearing notice.

Commissioner Morris noted the staff report was good and thorough.

Commissioner Godfrey asked if he would need to abstain from voting on this amendment as he was a Downtown Partnership board member. Ms. Jill Steele stated he would only need to abstain from vote if he were to benefit financially from this amendment if it were approved. Commissioner Godfrey said he wouldn’t have anything to gain, but stated he would like to abstain from vote on this amendment.

Mayor Baldwin asked, per Ch. 1271.11(d) that prohibits the sale of large household appliances, if J.C. Penney's were to relocate downtown, would they not be allowed to sell washers and dryers. Ms. Hilton stated they would have to look at the total amount of what is being offered for sale, and if a small amount of appliances were being sold ancillary to the overall retail use the store would still be allowed. Ms. Hilton stated that in her opinion, that that portion of the ordinance was intended to prevent second hand goods from being sold.

A ROLL CALL VOTE WAS TAKEN: EIGHT IN FAVOR (BARKER, BALDWIN, FRANTZ, HICKS, MORRIS, SCHEINFELDT, SPRANGER AND STETLER); ONE ABSTAINED (GODFREY); NONE OPPOSED MOTION APPROVED.

7. Old Business:

A. Accessory Buildings Ordinance Review and Discussion:

Ms. Christine Hilton provided a copy of the proposed Accessory Building ordinance revision.

Commissioner Stetler stated he is in opposition to allowing lots having larger buildings as they could be used for running businesses illegally, and feels it would destroy the character of residential neighborhoods. Stated he would be in opposition of this ordinance revision.

Commissioner Frantz stated she would be in agreement with Commissioner Stetler for the need to have a limit on the size of accessory buildings. Ms. Hilton stated the revision does have a limit of 1,500 sq. ft. as stated in the proposed ordinance.

Commissioner Barker stated in looking in the past variance request, there had only been 13 with an average of 2 per year and feels they need to be careful of changing the ordinance only because of those few variance requests. He noted that the policing of accessory buildings would be an enforcement issue of what is allowed; stated he is ready to approve and move forward.

Commissioner Frantz asked how large is a 1,500 sq. ft. building and if they were going to regulate the building design? Ms. Hilton noted the survey showed several sizes and that the height restriction would also restrict the size. Said the ordinance was not going to determine the design of the buildings as based on the survey results and workshop discussion.

Commissioner Stetler stated if you are the owner and want to build an accessory building; it is different that being the neighbor who cannot protest. Ms. Hilton stated a 1,500 sq. ft. building would be only allowed on 1/3 of an acre and not on a smaller lot. She noted that the survey done by the Planning Commission brought them to this conclusion for changes.

Mayor Baldwin stated she was in agreement with the draft ordinance revision.

Commissioner Spranger stated the Planning staff done a good job and they need to make a decision and vote.

Commissioner Scheinfeldt stated he appreciated getting a copy today and that the process between now and then; protocols needs to be met. Ms. Hilton stated they would need to notice and hold a public hearing and then vote.

8. New Business:**A. Review of the City of Battle Creek Master Plan:**

Ms. Christine Hilton provided a slide show presentation of the Master Plan, and stated the law requires the plan to be reviewed every five years. She further noted that the current master plan is based on twenty year old Census data, and the 2010 Census information would need to be completed, reviewed, and analyzed before determining what, if any, changes should be made. She stated that there seems to be a misconception that the plan is invalid, incomplete, or out-of-date, but in her opinion it is a very well-written and current document.

Discussion:

Commissioner Stetler stated neighbors should share the Master Plan and jointly review it together.

Commissioner Frantz stated the Form Based Code and Beckley undeveloped area is the only thing not showing.

Mayor Baldwin asked for clarification of the zoning as it does not match the plan. Ms. Hilton stated the Master Plan shows where you want to be in 20 years, not where we are currently. Noted any requests before the Planning Commission should be consistent with the Master Plan. Commissioner Scheinfeldt stated Ms. Hilton was correct that they should take into consideration that any changes being proposed should match with the Master Plan.

Mayor Baldwin stated new residents need to get involved as to what brought them to Battle Creek; she inquired as to a project listed in the master plan for a proposed park at the end of Goguac Lake and any flood plane changes that need to be aware of and possible opportunity for developers with new areas for construction. Commissioner Morris stated the wet lands area at Goguac Lake would not be developed as they are protected.

Commissioner Godfrey expressed concerns for BRAC; with the property adjacent of airport being changed from Industrial to something else and to protect the Air National Guard and not have it commercially developed.

Commissioner Barker stated he is excited to go through this process as it will be new to him; noted staff and planning commission members are bright and educated to do a good job. He encourages the commissioners to review the Master Plan and feels any changes needed would be limited. Noted that Form Based Codes is difficult to incorporate into various areas and might need to contract out for help.

Commissioner Godfrey stated it was an involved situation and wondered about the budget to undertake the anticipated cost. Ms. Hilton stated that it was not in the 2010-2011 budget but that the census information would need to be done and available, which isn't anticipated until at least April 2011. Noted that other cities with a similar size and land area as Battle Creek have gotten RFP estimates and low bid was \$100,000.

Commissioner Spranger stated there are changes occurring to Beckley Road. Ms. Hilton stated this fall the Planning Commission will take a more in-depth look at the master plan as a preliminary to the process that will be followed when the 2010 Census information is available.

Commissioner Hicks stated that economic growth is a concern.

Commissioner Stetler stated for the S.W. portion of the city they would need the airport sound study provided to them in order to plan around.

Commissioner Scheinfeldt noted regarding the legislative mandate to show they have reviewed the Master Plan and if they are current today. Ms. Hilton stated yes, they are current as of today.

Commissioner Hicks asked regarding the City's Budget and availability of funds to appropriate for Master Plan Revision. Ms. Susan Bedsole stated there is a small amount that is available to be used for the Master Plan update process. Commissioner Hicks asked if between now and the time it is needed could it be not available. Ms. Bedsole stated no, it is specifically for the Master Plan update and would be used for that purpose.

Commissioner Hicks asked if the timeline was O.K. Commissioner Spranger stated he would volunteer to help in order to move the timeline up. Commissioner Barker asked if with the available dollars, can now be speeded up.

Mayor Baldwin stated the 2010 Census is a key piece and would be needed. Commissioner Godfrey agrees the 2010 census will change things. Commissioner Barker stated the issue is not to hurry; steps regarding the public input or preliminary steps could possibly be done now. Commissioner Hicks stated if done now it could be wasted work.

Commissioner Morris he spoke to someone at the Census Bureau and they stated that they are surprised at the count thus far.

Commissioner Scheinfeldt stated he agrees with Commissioner Barker to begin preliminary steps now on the Master Plan and then after the receipt of the 2010 Census information make changes as needed.

Commissioner Hicks said they should ask the staff to be mindful of best practices. Ms. Hilton stated staff would definitely take into consideration.

9. Comments by the Public: None

10. Comments by the Staff and Commission Members:

Commissioner Frantz questioned regarding the Accessory Building amendment, could it require new construction to fit character of the main structure. Commissioner Spranger cautioned that such wording could limit use of alternative materials including metal roofs. Ms. Hilton stated the language could be added that can limit architectural style, etc. if that was the desire of the Commission.

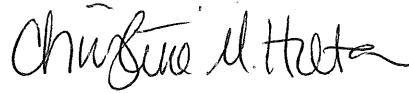
Ms. Hilton spoke of the email sent weeks ago that was asking for discussion and noted what can and cannot be shared via email. Ms. Jill Steele stated that the Attorney General states it is a violation of the Open Meetings Act to deliberate outside of a public meeting. The email sent from Ms. Hilton would have been O.K. as Ms. Hilton is not a board member; however, any commission response to emails should be sent directly to Ms. Hilton and not to other members of the Commission. Commissioner Hicks asked what can be sent. Ms. Steele stated any issues that come before the board should not be discussed with other commissioners, but that training notices, etc. would be acceptable.

Mayor Baldwin referenced the 8 to 1 vote today regarding the development of the Special Use Permit; stated she recognize and support the Planning Commission's decisions.

11. **Adjournment:**

The meeting adjourned at 5:50 P.M.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Christine M. Hilton". The signature is fluid and cursive, with a large initial "C" and a stylized "H".

Christine M. Hilton, AICP
Executive Secretary
Planning Commission